IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.693 of 2005

NDA Civilian Employees Asson...Petitioner
vs
Union of India and ors...Respondents

Mr.Sandeep Marne for petitioner
Mr. Suresh Kumar with S.S.Sarkar for respondents

CORAM: A.P.SHAH & D.Y.CHANDRACHUD JJ.
Dated 7.6.2005

P.C:

l. This petition under Article 226 of the Constitution is directed against the order of the Central Administrative Tribunal dismissing the O A filed by the petitioners. The O A was filed by civilian employees of the College of Military Engineering and National Defence Academy seeking declaration that they were entitled to receive transport allowance as per the recommendations of the Vth Pay Commission and to direct the respondents to pay the transport allowance to them and also for a declaration that para 3(2) of the impugned letter dated 3.l0.l997 in so far as the words "or within the campus housing the place of work and residence" are violative of Articles l4 and l6 of the Constitution and for quashing and setting aside the letter dated 22.l2.l999.

2. It appears that the Vth Pay Commission in its report recommended grant of transport allowance to the Central Government employees at the rate of Rs.800, 400 and l00 in "A-l" and "A" cities. The Government of India accepted the recommendation of the Pay Commission and issued order dated 3.l0.l997 with certain modification. Para 3(ii) which is relevant for the purpose of this petition reads as follows:

> "(ii) The allowance shall not be admissible to those employees who are provided with Government accommodation within a distance of l km or within a campus housing the places of work and residence"
>
> "Note: The grant of allowance under those orders wold be subject to furnishing of a certificate by the employee that the Government accommodation is not located within l km from the place of work of the concerned employee or within a campus housing the places of work and residence".

3. The submission of Mr. Marne, learned counsel

appearing for the petitioners is that there is no logical or reasonable difference between the employee travelling l km to his place of work, whether he lives within or outside the campus, the same transport cost have to be met. He submitted that the object of grant of transport allowance as stated in the letter dated 3.l0.l997 is to suitably compensate the government employee for the cost incurred on account of commuting between the place of residence and the place of duty. Once it is shown that the object of grant for grant of transport allowance is for compensating the cost of travel then there cannot be any discrimination between the employees not staying within campus and employees staying within the campus, both sets of employees staying at a distance of more than l km from the place of work. Therefore according to Mr.Marne para 3(2) of the letter creates arbitrary and unreasonable distinction between two similar sets of employees thereby offending equality clause envisaged by Art l4 of the Constitution of India.

3. We find absolutely no merit in the submissions of Mr. Marne. The Pay Commission recommended transport allowance for the Central Government employees on account of various factors like

unprecedented growth of city limits, increase in volume of traffic, and non availability of residential accommodation at a reasonable rent near the place of work etc which results in an unprecedented increase of commutation time between residence and place of work and affects the work environment in office adversely as employees spend much of their energy on commuting and are therefore not able to concentrate properly on official work. The Pay Commission has recommended the transport allowance in respect of those Government employees who are compelled to experience the difficulties as noticed by the Commission. The employees residing in Government accommodation within the campus are not affected by the factors such as unprecedented growth of city limits, increase in volume of traffic and non availability of residential accommodation at reasonable rent near office etc. The Government has therefore decided to exclude the category of employees residing in government accommodation within the campus from the eligibility to draw the transport allowance. There are certain advantages in being provided house within the campus. The employees residing in the campus are not required to spend their energy in commuting and that they do not face the

difficulties which are normally faced by the employees who are staying at distant places. Merely because the provision is disadvantageous to certain individuals or small section of the people it cannot be termed as violative of Art l4 of the Constitution. Petition is dismissed.